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ATTORNEYS AT LAW

January 31, 2005

Via Electronic Filing

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Presentation in WC Dockets No. 03-266, 04-36

Dear Ms. Dortch:

On January 27 and 28, 2005, Sureel Choksi, Executive Vice President – Services, Level 3, John Ryan Associate General Counsel, Level 3, Cindy Schonhaut, Director, Federal Regulatory, Level 3, and the undersigned, on behalf of Level 3 Communications, met with Commissioner Martin, Commissioner Abernathy, Christopher Libertelli, Senior Legal Adviser to the Chairman, Dan Gonzalez, Senior Legal Adviser to Commissioner Martin, Jennifer Manner, Legal Adviser to Commissioner Abernathy, Jeffrey Carlisle, Chief, Wireline Competition Bureau, Tamara Preiss, Chief, Competitive Pricing Division, Jennifer McKee, Steve Morris, Pam Arla and Jeremy Marcus, all of the Wireline Competition Bureau, regarding the above-captioned dockets. This letter summarizes points made during that discussion.

Grant of Level 3's forbearance petition is critical to removing a cloud of regulatory uncertainty that is limiting investment in IP-enabled services. Investors will not commit as much capital to develop new, innovative IP applications while it is uncertain whether the FCC will confirm that this traffic is subject to reciprocal compensation or decide to apply access charges. Access charges, if applied, would not be merely a small incremental cost, but will have a distinct impact on the cost structure of an IP-enabled product.

Consumers are currently seeing the benefits of exchanging IP-enabled services traffic with the PSTN under reciprocal compensation mechanism. As a wholesaler, Level 3 provides the building blocks to retailers that provide IP-enabled services both to residential customers

and to business of all sizes. In the mass market, consumers are already being offered unlimited “any distance” calling, with a package of calling features, at prices as low as \$19.95 per month. These retail IP-enabled services are putting pressure on providers of traditional circuit-switched services to lower their prices and improve their product packages. It seems clear, however, that the retailers making these offerings are doing so anticipating that the Commission will continue to keep IP-enabled services outside the access charge regime. Should the Commission apply access charges in any form, the rates for these consumer offerings predictably will increase.

There are already anecdotal reports that IP-enabled services, particularly voice applications, are beginning to drive broadband demand, rather than simply trailing broadband demand. This is true even though voice applications are still only at the initial stages, with more advanced features and capabilities still being developed. In a more stable regulatory environment that confirms the appropriateness of exchange IP-enabled traffic with the PSTN under reciprocal compensation mechanisms, not only will consumers see reduced-rate offers continue, but they will also see the introduction of new products that move beyond voice communications to integrate other applications, including unified messaging, voice to text and text to voice, customized call handling and routing, and many more personalization features. Personalization has driven tremendous growth in wireless services, and IP-enabled services will bring personalization to the wireline user as well.

Moreover, it makes little sense to apply an access charge regime that virtually all parties agree is broken and in need of reform to new technologies and applications, when the FCC is, at the same time, determining how to reform the entire intercarrier compensation regime, including access charges. A more deregulatory – and logical – approach would be to determine whether access charges should even continue to exist in a reformed intercarrier compensation system before applying those charges to new applications. Level 3 has proposed such a comprehensive reform plan as part of the Intercarrier Compensation Forum.

There is no evidence that there will be any harm to universal service, particularly during the interim until the Commission begins to implement comprehensive intercarrier compensation reform. To be covered by Level 3’s petition, traffic (other than incidental PSTN-PSTN traffic) must be IP on one end. Third party, neutral industry projections by TIA show that traffic increasing to approximately 19.2 million lines through 2007 (up from 6.5 million lines in 2004), and Level 3 has used those projections to show that applying interstate access charges to IP-PSTN traffic would have only a limited impact on ILEC revenues. Moreover, Level 3’s petition excludes from the scope of the requested forbearance geographic areas served by incumbent LECs that remain exempt from Section 251(c), pursuant to Section 251(f)(1).

Finally, hyperbolic allegations that grant of the Level 3 petition will lead to rampant fraud lack any credible basis. Level 3 has reached voluntary interconnection agreements with two RBOCs, BellSouth and Verizon, which permit the use of multijurisdictional trunks, with safeguards including audit rights. The issue of safeguards is one that the state commissions are well-suited to address in interconnection mediation and, when necessary, arbitration. The real solution to ending the potential for fraud in intercarrier compensation would be to adopt

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comprehensive intercarrier compensation reform, as proposed by the Intercarrier Compensation Forum.

Sincerely,

/s/

John T. Nakahata
Counsel for Level 3 Communications